IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY NINTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 19141 of 2004

Between:

V.Nagendram, w/o late Pattabi Rama Rao,
r/o Mandlamur, Mandlamuru (Mandal), Prakasam District.

..... PETITIONER

AND

1 The General Manager, The Prakasam District Co.operative Central Bank Limited,
Ongole, Prakasam District.
2 The Branch Manager, Prakasam District Co.operative Central Bank,
Ravinuthala Branch, Korsapadu Mandal, Prakasam District.
3 The Branch Manager, Prakasam District Co.operative Central Bank,
Chirala Branch, Chirala, Prakasam District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or direction more particularly one in the nature of writ of mandamus declaring the inaction of the respondents in payment of Provident Fund Amount to the petitioner, standing to the credit of petitioner's husband P.F.accounts maintained by 2nd & 3rd respondents which is illegal, arbitrary and contrary to the rules and consequently direct the 2nd and 3rd respondents to pay the PF amount alongwith benefit of the rate of 12% to the petitioner.

Counsel for the Petitioner:MR.S.SIVA PRASAD

Counsel for the Respondents.: MR.R.V.NAGABUSHNAM RAO

The Court made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 19141 of 2004

O R D E R:

Challenging the inaction of the respondents in not paying the Provident Fund amount to the petitioner standing to the credit of the petitioner's husband's P.F. Accounts maintained by 2nd and 3rd respondents, the present writ petition is filed.

The petitioner in her affidavit stated that her husband was appointed as a Paid Secretary in Veerayapalem Primary Agricultural Cooperative Society in the year 1977 and consequent on the abolition of common cadre of the Secretaries, the District Collector who is the competent authority allotted Santaraveeru PACS. While the husband of the petitioner was working as Secretary, he died on 17.9.2001. The authorities deducted the provident fund amount from his salary and contributions to the P.F. account maintained by 2nd and 3rd respondents. In spite of giving representations, the authorities did not release the provident fund. Therefore, the present writ petition is filed.

The respondents filed counter affidavit *inter alia* stating that the respondent-Central Bank is maintaining the provident fund account with respect to the contributions opened in the individual names of the Secretaries of the Societies in accordance with the Circular Instructions dated 1.4.1987. Earlier the Secretaries without there being a staffing pattern and fixation of pay scales were drawing their salaries at their whims and fancies and equal to the pay of employees in Cadre V of the District Cooperative Central Bank and the salaries were drawn irregularly and excess amounts were drawn

by all the Secretaries. The Auditors of Daivalaravuru PACS and Santharavuru PACS, where the petitioner's husband had worked as Secretary, had pointed out that there were certain irregularities in drawing the salaries and the petitioner's husband had irregularly drawn certain amounts. As the petitioner's husband misappropriated the funds of the Society to a tune of 1,08,705-95ps. and failed to remit the misappropriated amounts, he was dismissed from service vide proceedings dated 4.9.2001. As per the circular instructions issued by the Commissioner for Cooperation & Registrar of Cooperative Societies vide Circular No.28571/2004/116-C dated 24.8.2004, any terminal benefit payable to the retiring/resigning staff shall be paid only after adjusting the dues of such employees of the Society and therefore there are no merits in the writ petition.

The Commissioner for Cooperation & Registrar of Cooperative Societies, Hyderabad in his proceedings dated 1.4.1997 clarified the decision with regard to the maintenance of the P.F. Accounts. As per the said instructions, the P.F. accounts have to be opened by societies as per rules in favour of the employees working and Provident Fund Accounts are to be invested in the Cooperative Central Banks concerned. The General Managers of the Cooperative Central Banks are requested to open the deposit accounts in the names of employees of the society whenever they are approached for. The proceedings of the Chairman dated 4.9.2001 bearing No. Vigilance F.No.198/2001-2002 goes to show that the husband of the petitioner committed misappropriation of the amounts to a tune of Rs.1,08,705-95ps. When a show-cause notice was given, he failed to submit explanation. The authorities gave another notice for which the husband of the writ petitioner requested to grant time till 10.7.2001 to remit the misappropriated amounts. Accordingly he was permitted to repay the misappropriated amount. Again the husband of the petitioner sought for extension of time till 25.8.2001 but he failed to do so. Thereafter, the petitioner's husband was dismissed from service with immediate effect. The Commissioner for Cooperation & Registrar of Cooperative Societies vide Circular Rc.No.28571/2004/116-C

dated 24.8.2004 directed all the concerned that all the terminal benefits payable to the retiring/resigning staff as per relevant Act and Rules or instructions communicated from time to time shall be paid only after adjusting dues of such employee to the Society.

According to the respondents, an amount of Rs.1,62,798/- is in the credit of P.F. Account of the husband of the petitioner as on 30.3.2004. According to the respondents, the irregular drawal of salaries and irregular drawal of P.F. amounts and misappropriation of society funds came to Rs.6,13,540-96ps. Therefore, the respondents rightly did not pay the P.F. amount to the writ petitioner. It is not a case of retention of the amount without any authority or contrary to the provisions of the Act or circular instructions. The respondents withheld the amount in view of the fact of irregular drawal of salaries, misappropriation of society funds and irregular drawal of P.F. amount by the husband of the petitioner.

According the learned counsel for the petitioner, the respondents 2 and 3 have no authority to withhold the amount. But, as per the circular instructions, no terminal benefits to the staff shall be paid without prior approval of the General Manager, District Cooperative Central Bank and District Cooperative Officer of the District. It is also contended by the learned counsel for the petitioner that the allegations are false and no regular departmental enquiry was conducted. No doubt, it may be true that no regular departmental enquiry was conducted against the husband of the petitioner, but the same was not challenged in these proceedings and therefore those proceedings have become final. Though it is contended that no notice was given to the husband of the petitioner before dismissal, but as seen from the proceedings dated 4.9.2001, a show-cause notice was given, charges were framed and the enquiry was conducted. Therefore, the contention that no enquiry was conducted and no notice was given is baseless. Furthermore, the said proceedings have not been challenged. It is not a case of withholding the P.F. amount of the husband of the petitioner illegally without any jurisdiction.

The writ petition is devoid of merit and it is dismissed accordingly. No order as to costs.

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K.C. Bhanu, J.

Date: --11—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The General Manager, The Prakasam District Co.operative Central Bank Limited,
Ongole, Prakasam District.
2 The Branch Manager, Prakasam District Co.operative Central Bank, Ravinuthala Branch, Korsapadu Mandal, Prakasam District.
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